IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.2 OF 2004

Smt.Gor Harsha Ashish. ... Petitioner.

vs.

1.Khambatta Securities Ltd.
And another. ... Respondents.

Mr.A.Bookwala with Y.V.Shah i/b. C.N.Mehta, for Petitioner.

Mr.A.M.Vernekar, for respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Arbitral Tribunal of the Bombay Stock Exchange dated 17th April,2003, directing the petitioner

to pay certain amounts to the respondent no.1.

2. The Respondent no.1 submitted a claim statement before the Arbitral Tribunal, stating therein that the petitioner was the client of the respondent no.1 acting through its sub-broker M/s.Penta Trading Pvt.Ltd., and that the petitioner purchased 40050 shares of Hitechi Jewellery. On instructions from the petitioner, those shares were transferred to D-mat Account of M/s.Monalisa Collections. It was stated in the claim statement that the respondent no.1 has enclosed the copy of the letter received by the respondent no.1 from the petitioner. It was further stated that further purchases were made but the full payment was not made by the petitioner, therefore, balance amount was claimed. The petitioner appeared before the Arbitral Tribunal and filed a reply. In the reply, the petitioner denied the entire transaction and stated that the transaction was between the respondent no.1 and M/s.Monalisa Collections and the petitioner was not concerned with it. However, the statement in the statement of claim made by the respondent no.1 that the shares purchased by the petitioner were transferred in the D-mat account of M/s.Monalisa Collections on the instructions of the petitioner, was not denied. It appears that thereafter,

further proceedings were conducted and the arbitrators have made the Award. The Arbitrators have held that the petitioner is liable mainly on the basis of two letters viz. One letter dated 13.3.2001 and the other undated letter.

3. It may be pointed out here that though both the letters were produced by the Respondent no.1 before the Arbitral Tribunal, before the Arbitral Tribunal the petitioner did not dispute the authenticity of the letters. The only argument that was advanced before me was that in view of the letter dated 23.3.2001 written by Respondent no.1 to the Surveillance Department of Bombay Stock Exchange, it is clear that the respondent no.1 was claiming M/s.Monalisa Collections to be its client and not the petitioner. According to the learned Counsel, the Arbitral Tribunal has not considered the letter dated 23.3.2001 though it was specifically referred to in the reply filed by the petitioner. In the Award, the Arbitral Tribunal has, ad-verbatim, quoted the contents of the two letters on which the respondent no.1 had relied on and has observed that it is clear from those letters which are undisputed, that the transactions were between the petitioner and the respondent no.1, and M/s.Monalisa Collections was the nominee of the

petitioner, and the respondent no.1 did not have any independent relationship with M/s.Monalisa Collection. Now perusal of the letter dated 23.3.2001 relied on by the petitioner shows that really speaking, it supports the case of the Respondent no.1 that the Respondent no.1 was treating M/s.Monalisa Collections as a third party. In that letter, the respondent no.1 made firm statement that the cheques were issued for payment of the shares purchased, by a third party M/s.Monalisa Collections. In my opinion, therefore, the view that has been taken by the Arbitral Tribunal that the transactions were really between the petitioner and the respondent no.1 and M/s.Monalisa Collections was merely the nominee of the petitioner, is a possible view of the material on record.

4. The learned counsel for respondent no.1 also points out to me that the case of the petitioner that there was no client-broker agreement between the petitioner and the respondent no.1, is also incorrect. The learned counsel produced a copy of the client-broker agreement between the petitioner and respondent no.1. Taking overall view of the matter therefore, all the findings recorded by the Arbitral Tribunal are possible to be recorded on the basis of material available on record. Considering the limited jurisdiction of this

Court under Section 34 of the Arbitration and Conciliation Act,1996 to interfere with the Award made by the Arbitral Tribunal, in my opinion, the Award does not call for any interference at the hands of this Court. The petition therefore fails and is dismissed. The petitioner is directed to pay costs of this petition to the respondents as incurred by the respondents.

22.3.2005 ---